

109 FERC ¶ 61,145
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 3, 2004

In Reply Refer To:
Texas Eastern Transmission, LP
Docket Nos. RP99-480-010
RP99-480-011

Texas Eastern Transmission, LP
P.O. Box 1642
Houston, TX 77251-1642

Attention: David A. McCallum, Director, Rates and Tariffs

Reference: Negotiated Rate Tariff Sheets and Negotiated Rate Service Agreements

Dear Mr. McCallum:

1. On October 4, 2004 and October 8, 2004, Texas Eastern Transmission, LP (Texas Eastern) filed tariff sheets¹ along with negotiated rate agreements for firm transportation service to be rendered to the City of Bridgeport Utilities Board (Bridgeport), the City of Dalton (Dalton), and Piedmont Natural Gas Company (Piedmont) to be effective November 1, 2004.² Waiver of the notice period is granted and the tariff sheets referenced in the appendix and service agreements are accepted effective the later of November 1, 2004, or the date the M-1 Expansion Project facilities are placed into service, subject to modifications and condition, as discussed below. Our action here permits Texas Eastern to provide service to Bridgeport, Dalton and Piedmont while preserving our statutory responsibility to assure service is rendered in a not unduly discriminatory manner.

¹ See the attached Appendix for a listing of the tariff sheets.

² Texas Eastern's October 8, 2004 filing in Docket No. RP99-480-011 corrected certain typographical errors that were present on the tariff sheets submitted in its October 4, 2004 filing, and submitted a revised page from one of the negotiated rate service agreements in order to correct the reference to the termination year.

2. Texas Eastern proposes, in accordance with its negotiated rate authority,³ to implement three negotiated rate agreements between Texas Eastern and (i) Bridgeport, (ii) Dalton, and (iii) Piedmont for firm transportation service pursuant to Rate Schedule FT-1, utilizing the M-1 Expansion Project facilities.⁴ Specifically, the Bridgeport service agreement (Contract No. 910451) provides for (i) up to 1,705 Dth/d of firm transportation service from November 1 through March 31 and up to 1,000 Dth/d of firm transportation service from April 1 through the following October 31 for a term from November 1, 2004 through October 31, 2009,⁵ and (ii) up to 705 Dth/d of firm transportation from November 1 through March 31 and 0 Dth/d of firm transportation service from April 1 through the following October 31 for a term from November 1, 2009 through October 31, 2014, at a monthly Reservation Rate of \$10.65 per Dth. The Dalton service agreement (Contract No. 910449) provides for up to 2,026 Dth/d of firm transportation service from November 1, 2004 through October 31, 2019, at a monthly Reservation Rate of \$7.057 per Dth. Finally, the Piedmont service agreement (Contract No. 910473) provides for up to 35,333 Dth/d of firm transportation service from November 1 through March 31 and 0 Dth/d of firm transportation service from April 1 through the following October 31 for a term from November 1, 2004 through March 31, 2019, at a monthly Reservation Rate of \$12.4708 per Dth.

3. Texas Eastern supports its proposal by filing proposed tariff sheets listing Bridgeport, Dalton and Piedmont as parties to negotiated rate arrangements, and Service Agreements dated: October 1, 2004 with Bridgeport; September 30, 2004 with Dalton; and September 20, 2004 with Piedmont. Texas Eastern indicates that in accordance with the 2003 Policy Statement,⁶ it filed marked versions of the Service Agreements with Bridgeport, Dalton and Piedmont highlighting the differences between the *pro forma*

³ In an unpublished Commission letter order issued September 22, 1999 in Docket No. RP99-480-000, the Commission authorized Texas Eastern to charge negotiated rates for its transportation services.

⁴ On February 28, 2003, in Docket No. CP02-381-000, the Commission granted to Texas Eastern certificate authorization to construct, own, operate and maintain certain mainline expansion facilities known as the M-1 Expansion Project. *Texas Eastern Transmission, LP*, 102 FERC ¶ 61,245 (2003). Texas Eastern states that it anticipates placing the facilities necessary to provide service to Bridgeport, Dalton and Piedmont in service on or about November 1, 2004, which will coincide with the effective date of the Service Agreements in the instant filing.

⁵ The monthly Reservation Rate is \$7.057 per Dth for 1,000 Dth of the Maximum Daily Quantity (MDQ) of 1,705 Dth. For the months of November through March only, the Reservation Rate is \$10.65 per Dth up to 705 Dth of the MDQ of 1,705 Dth.

⁶ *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 (2003) (2003 Policy Statement).

FT-1 Service Agreement in effect at the time Texas Eastern executed the Service Agreements with the above-mentioned parties.

4. Texas Eastern contends that the negotiated rate agreements do not contain terms and conditions that constitute impermissible material deviations from the *pro forma* Service Agreement. Texas Eastern asserts that, Article II and the second paragraph of Article I of the Piedmont agreement provide that the Piedmont Service Agreement shall be treated as a Right of First Refusal Agreement (ROFR Agreement), in accordance with Texas Eastern's tariff. Texas Eastern states that although section 1.35A of the General Terms and Conditions of its tariff states that ROFR Agreements are contracts for service at maximum rates, the Commission has previously allowed pipelines to offer such a contractual right of first refusal in other proceedings.⁷

5. Public notice of the filings was issued on October 7, 2004 for Docket No. RP99-480-010 and October 14, 2004 for Docket No. RP99-480-011. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁸ Pursuant to Rule 214 (18 C.F.R. § 385.214 (2004)), all timely filed motions to intervene and any motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

6. With one exception, *i.e.*, the proposal that the Piedmont service agreement be treated as a "ROFR Agreement," Texas Eastern's negotiated rate agreements filed herein generally appear to be consistent with the terms of the Negotiated Rate Policy Statement,⁹ and in accordance with Texas Eastern's tariff. The Commission permits pipelines to negotiate a contractual ROFR with shippers who would not otherwise qualify for the regulatory ROFR required to be given to long-term, maximum rate shippers by section 284.221(d) of the Commission's regulations and the pipeline's tariff.¹⁰ However, in order to ensure that such contractual ROFRs are offered on a not unduly discriminatory

⁷ Citing, *e.g.*, *Tennessee Gas Pipeline Co.*, 91 FERC ¶ 61,070 (2000) (*Tennessee*).

⁸ 18 C.F.R. § 154.210 (2004).

⁹ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipeline Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076 (1996); *order on clarification*, 74 FERC ¶ 61,194 (1996); *order on reh'g*, 75 FERC ¶ 61,024 (1996); *modification of negotiated rate policy*, 104 FERC ¶ 61,134 (2003).

¹⁰ *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, FERC Stats. & Regs., Regulations Preambles (July 1996-December 2000) ¶ 31,091 at 31,341 (2000).

basis, the Commission only allows pipelines to negotiate contractual ROFRs, if its tariff contains a provision offering to negotiate such contractual ROFRs on a not unduly discriminatory basis.¹¹ Accordingly, the Commission accepts the instant negotiated rate contracts effective the later of November 1, 2004, or the date the M-1 Expansion Project facilities are placed into service, subject to Texas Eastern filing, within 15 days from the date of this order, to either eliminate the ROFR provision from its proposed service agreement with Piedmont, or revise its tariff to permit it to mutually agree with a shipper to a contractual ROFR on a not unduly discriminatory basis in any circumstance when a regulatory ROFR would not apply automatically.

By direction of the Commission.

Magalie R. Salas
Secretary

cc: All Parties

¹¹ See, *ANR Pipeline Co.*, 103 FERC ¶ 61,084 (2003), and *ANR Pipeline Co.*, 105 FERC ¶ 61,112 at P 19 (2003).

Appendix

Texas Eastern Transmission, L.P.

FERC Gas Tariff, Seventh Revised Volume No. 1

Tariff Sheets Accepted Effective November 1, 2004

Substitute Original Sheet No. 109

Substitute Original Sheet No. 110

Substitute Original Sheet No. 111

Sheet Nos. 112 - 125

Tariff Sheets Rejected as Moot

Original Sheet No. 109

Original Sheet No. 110

Original Sheet No. 111